

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
SAYE FISH, :
:
Petitioner, : 05 Civ. 5682 (DLC)
:
-v- : MEMORANDUM OPINION
:
AND ORDER
CRAIG APKER, Warden, et al., :
:
Respondent. :
:
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DENISE COTE, District Judge:

Pro se petitioner Saye Fish ("Fish"), a federal prisoner sentenced by the United States District Court for the Eastern District of New York on October 26, 2004 to a prison term of one year and one day, has brought this petition pursuant to 28 U.S.C. § 2241 to challenge the policy of the Bureau of Prisons ("BOP"), in existence since December 2002, not to consider prisoners for designation to a community corrections center ("CCC") until the last ten percent of their prison terms. Prior to December 2002, the BOP considered an inmate eligible for six months of community confinement even if six months constituted more than ten percent of his term of imprisonment. Sanders v. Menifee, No. 04 Civ. 1483 (DLC), 2004 WL 1562734, at *1 (S.D.N.Y. July 13, 2004). New BOP regulations replaced the December 2002 rules on February 14, 2005. See 28 C.F.R. §§ 570.20 - 21. Fish alleges that under the new policy, he is scheduled for release to a CCC on February 14, 2006, but that under the pre-December 2002 policy he would have

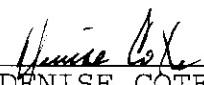
been eligible for release to a CCC on or about September 14, 2005.

Fish claims that the new regulations are illegal because they exceed the BOP's authority under 18 U.S.C. § 3621(b) by failing to take into account certain factors enumerated in the statute, and because they violate the Ex Post Facto Clause as applied to him. For the reasons expressed in Lauriola v. Menifee, No. 05 Civ. 3967 (DLC), 2005 WL 1949965, at *1-2 & n.3 (S.D.N.Y. Aug. 12, 2005), and Troy v. Apker, No. 05 Civ. 1306 (GEL), 2005 WL 1661101, at *1-3 (S.D.N.Y. June 30, 2005), Fish's arguments are rejected. Accordingly, it is hereby

ORDERED that the petition is denied. The Clerk of Court shall dismiss this petition. Because reasonable jurists have resolved this issue differently, see Troy, 2005 WL 1661101, at *1 (collecting cases), Fish is granted a Certificate of Appealability. See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

SO ORDERED:

Dated: New York, New York
September 12, 2005


DENISE COTE

United States District Judge